

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM E. SNYDER and KIMBERLY S.  
SNYDER, individually, and on behalf of their  
marital community,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY OF  
BLOOMINGTON, ILLINOIS, and RYAN  
WRIGHT, an individual,

Defendants.

Case No. C07-5104 FDB

ORDER GRANTING PLAINTIFFS'  
MOTION FOR REMAND

This matter comes before the Court on Plaintiffs' Motion to Remand to Superior Court. After reviewing all materials submitted by the parties and relied upon for authority, the Court is fully informed and hereby grants Plaintiffs' motion and remands this case to the state court.

**INTRODUCTION AND BACKGROUND**

On February 1, 2007, Plaintiffs filed their complaint for damages and declaratory relief in Pierce County Superior Court of Washington naming State Farm Mutual Automobile Insurance

1 Company (hereafter, State Farm) as the only defendant. The lawsuit arises out of a dispute as to  
2 uninsured motorist coverage. Plaintiffs' complaint alleges causes of action for breach of contract,  
3 breach of the duty of good faith and fair dealing, breach of fiduciary duty, negligence, loss of  
4 consortium, and violation of the Washington Consumer Protection Act. The complaint does not  
5 allege any federal causes of action. In the prayer for relief, Plaintiffs seek general and special  
6 damages, with no amount specified and an award of attorney's fees.

7 On March 6, 2007 State Farm removed the action to this Court asserting diversity  
8 jurisdiction. The Notice of Removal states that "[t]he United States District Court has original  
9 jurisdiction of the subject matter of this action under 28 U.S.C. §1332 because plaintiffs and  
10 defendant are citizens of different states and State Farm believes that the amount in controversy  
11 exceeds \$75,000, exclusive of costs and interest." Concerning the amount in controversy the Notice  
12 of Removal states that "State Farm has a good faith belief that plaintiffs are seeking damages in  
13 excess of the \$75,000 jurisdictional amount because (1) the plaintiffs allege that the policy provides  
14 up to \$300,000 in coverage," and (2) in their prayer for relief, "plaintiffs ask for an award of  
15 damages and full payment of insurance coverage as agreed, along with general and special damages  
16 ... lost interest, lost property, loss use of money, treble damages and various other forms of damages  
17 for their contract and tort claims, plus attorneys fees and costs."

18 Plaintiffs now move to remand to the state court on the basis that (1) an amendment of the  
19 complaint to add a non-diverse defendant defeats the requirement of complete diversity and/or (2)  
20 the amount in controversy does not meet the \$75,000 jurisdictional requirement. Plaintiffs also seek  
21 an award of costs and fees incurred as a result of the alleged improvident removal.

22 Plaintiffs' state that prior to the filing of the notice of removal, State Farm was notified that  
23 Plaintiffs were amending their complaint to add a necessary non-diverse party defendant. On the  
24 same day that State Farm filed notice of removal, March 6, 2007, Plaintiffs filed the amended  
25 complaint adding a non-diverse defendant, Ryan Wright. The State Farm insurance policy, which is

1 the basis of this action, provides that in any lawsuit against State Farm for uninsured motorist  
2 coverage the insured must name the uninsured motorist as a defendant. Mr. Wright is the at-fault  
3 uninsured driver. Plaintiffs also informed State Farm that their lawsuit does not seek an amount in  
4 excess of the jurisdictional requirement of \$75,000.

### 5 **MOTION FOR REMAND**

6 The removal statute, 28 U.S.C. § 1441, provides that “any civil action brought in a State  
7 court of which the district courts of the United States have original jurisdiction, may be removed by  
8 the defendant or defendants, to the district court of the United States for any district ... where such  
9 action is pending.” 28 U.S.C. § 1441(a). One instance in which the district courts of the United  
10 States have “original jurisdiction” is where there is complete diversity between the parties and the  
11 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1). The proper procedure for  
12 challenging removal to federal court is a motion to remand. A federal court must order remand if  
13 there is any defect which causes federal jurisdiction to fail, or if there is any defect in the removal  
14 procedure. 28 U.S.C. § 1447(c). The removal statutes are construed restrictively, and any doubts  
15 about removability are resolved in favor of remanding the case to state court. Gaus v. Miles, Inc.,  
16 980 F.2d 564, 566 (9<sup>th</sup> Cir. 1992). On a motion to remand, the removing defendant faces a strong  
17 presumption against removal, and bears the burden of establishing that removal was proper by a  
18 preponderance of evidence. Id. at 567; Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403-04  
19 (9<sup>th</sup> Cir. 1996).

### 20 **Amount in Controversy**

21 Plaintiff seeks remand on the basis that their claims do not meet the jurisdictional threshold of  
22 an amount in controversy in excess of \$75,000.

23 The jurisdictional minimum may be satisfied by claims of general and specific damages,  
24 attorney's fees, and by punitive damages. Kroske v. U.S. Bank Corp., 432 F.3d 976, 980 (9<sup>th</sup> Cir.  
25 2005); Gibson v. Chrysler Corp., 261 F.3d 927, 946 (9<sup>th</sup> Cir. 2001); Galt v. Scandinavia, 142 F.3d

1 1150, 1155-56 (9<sup>th</sup> Cir. 1998). The removing defendant bears the burden of establishing federal  
2 jurisdiction, including any applicable amount in controversy requirement. Abrego Abrego v. The  
3 Dow Chemical Co., 443 F.3d 676, 682-83 (9<sup>th</sup> Cir. 2006). The presumption against removal  
4 jurisdiction applies with particular force to defendant's arguments that complaint frames an amount  
5 in controversy that exceeds the jurisdictional minimum. Gaus, at 566; Rodgers v. Central Locating  
6 Service, Ltd., 412 F. Supp.2d 1171, 1175 (W.D. Wash. 2006). Where the complaint does not  
7 specify the amount of damages sought, the removing defendant must prove by a preponderance of  
8 the evidence that the amount in controversy requirement has been met. Abrego Abrego, at 683;  
9 Gaus, at 566-67; Sanchez, at 404. Conclusory allegations by the defendant will not suffice to  
10 overcome the traditional presumption against removal jurisdiction. Rodgers, at 1178; Singer v.  
11 State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 375 (9<sup>th</sup> Cir. 1997). Instead, the courts may look  
12 beyond pleadings and consider other summary judgment type evidence relevant to the amount in  
13 controversy, tested as of the time of removal. Kroske v. U.S. BankCorp., 432 F.3d 976, 980 (9<sup>th</sup>  
14 Cir. 2005); Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9<sup>th</sup> Cir. 2004). Speculative argument  
15 regarding the potential value of the award is insufficient to establish the amount in controversy.  
16 Gaus, at 567; Conrad Associates v. Hartford Accident & Indemnity Co., 994 F. Supp. 1196, 1198  
17 (N.D. Cal. 1998).

18 State Farm's removal papers assert that "State Farm has a good faith belief that plaintiffs are  
19 seeking damages in excess of the \$75,000 jurisdictional amount ..." Other than a restatement of the  
20 types of claims and damages sought in the complaint, State Farm has not provided any factual  
21 evidence supporting this statement and, therefore, has not established that it is "more likely than not"  
22 that the amount in controversy exceeds \$75,000. See, Valdez, at 1117 (stating that information and  
23 belief hardly constitutes proof by a preponderance of the evidence); Gaus at, 567 (explaining that a  
24 conclusory allegation neither overcomes the strong presumption against removal jurisdiction, nor  
25 satisfies a defendant's burden of setting forth, in the removal petition itself, the underlying facts

1 supporting its assertion that the amount in controversy exceeds the threshold amount).

2 In response to the notice of removal, Plaintiffs filed post-removal declarations stating that the  
3 amount being sought against State Farm will not meet or exceed \$75,000. Post-removal  
4 declarations, stipulations or other events that reduce the amount recoverable, whether beyond the  
5 plaintiff's control or the result of her own volition, do not oust a court's jurisdiction once it has  
6 attached. Rogers v. Wal-Mart Stores, Inc., 230 F.3d 868, 872 (6<sup>th</sup> Cir. 2000); In re Shell Oil Co.,  
7 970 F.2d 355, 356 (7<sup>th</sup> Cir. 1992); Simmons v. PCR Technology, 209 F. Supp.2d 1029, 1033 (N.D.  
8 Cal. 2002). There is a difference, however, between evidence that clarifies a complaint that  
9 previously left the jurisdictional question ambiguous and evidence introduced by a plaintiff that seeks  
10 to reduce, not clarify, the demand after removal. See, Marcel v. Pool Co., 5 F.3d 81, 85 (5<sup>th</sup> Cir.  
11 1993); Gwyn v. Wal-Mart Stores, Inc., 955 F. Supp. 44, 46 (M.D. N.C. 1996). Here, the complaint  
12 is silent as to the amount in controversy. Thus, this Court may consider the post-removal evidence  
13 to "clarify" the amount in controversy at the time of removal. Thus, not only has State Farm not  
14 provided sufficient factual evidence supporting the its belief that the matter in controversy exceeds  
15 \$75,000, Plaintiffs have clarified their complaint and set forth a demand that is less than the  
16 jurisdictional requisite.

17 Plaintiffs are entitled to remand as the amount in controversy does not meet the jurisdictional  
18 requirement.<sup>1</sup>

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22 <sup>1</sup>If at a later time it becomes apparent through "an amended pleading, motion, order or other  
23 paper" that the amount in controversy exceeds \$75,000, State Farm may then remove the case within  
24 30 days of receiving such notice. 28 U.S.C. § 1446(b); Birkenbuel v. M.C.C. Constr. Corp., 962  
25 F.Supp. 1305, 1307 (D. Mont. 1997). Defendant's right to remove the case at a later time is, of  
26 course, subject to the one-year limit on removal. 28 U.S.C. § 1446(b); Burk v. Medical Savings Ins.  
Co., 348 F. Supp.2d 1063, 1070 (D. Ariz., 2004). The right of removal remains subject to the  
requirement of complete diversity.

## Complete Diversity

Plaintiffs also seek remand on the basis that Plaintiffs and the newly added defendant, Ryan Wright, are Washington citizens, and thus complete diversity between the parties does not exist.

After a case has been removed, if a plaintiff seeks to join a defendant whose joinder would destroy complete diversity, the court may deny the joinder, or allow the joinder and remand the case to state court. 28 U.S.C. § 1447(e). In the case of a diversity-destroying amendment, the district courts in the Ninth Circuit have fashioned a list of several factors which are used in the analysis of joinder pursuant to section 1447(e). See, Boon v. Allstate Ins. Co., 229 F. Supp.2d 1016, 1020 (C.D. Cal. 2002); IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, S.A. de C.V., 125 F. Supp.2d 1008, 1011 (N.D. Cal. 2000). The factors generally considered include (1) whether the party sought to be joined is needed for just adjudication; (2) whether the statute of limitations would preclude an original action against the new defendants in state court; (3) whether there has been unexplained delay in requesting joinder; (4) whether joinder is intended solely to defeat federal jurisdiction; (5) whether the claims against the new defendant appear valid; and (6) whether denial of joinder will prejudice the plaintiff. Boon, at 1020; IBC Aviation Services, at 1011; Clinco v. Roberts, 41 F. Supp.2d 1080, 1082 (C.D. Cal. 1999).

An analysis of these factors leads to the conclusion that joinder is appropriate and that the matter should be remanded to state court. The joined non-diverse defendant is a necessary party. State Farm's insurance policy requires that in any lawsuit for uninsured motorist coverage the plaintiff must name the uninsured motorist as an additional defendant. There has been no significant delay in joining the non-diverse defendant. The lawsuit was filed on February 1, 2007. Upon discovering the necessity of joining the uninsured party, Plaintiffs notified State Farm of their intention to amend the complaint and filed the amended complaint on March 6, 2007, the same day that State Farm removed the case to this court. Joinder of the non-diverse party cannot be considered intended to defeat federal jurisdiction where is required by the language of State Farm's

1 policy. Whether any claims against the non-diverse defendant are valid is of no consequence where  
2 it is the language of the State Farm policy that mandates the joinder of the uninsured motorist in  
3 order to maintain an action against the insurer. Denial of joinder would necessarily prejudice the  
4 Plaintiffs as the policy provides that a suit cannot be maintained against State Farm without joining  
5 the uninsured motorist as a named defendant.

6 The Court finds joinder appropriate and accordingly, a lack of federal jurisdiction due to the  
7 existence of a non-diverse defendant in the action. Remand is appropriate.

#### 8 **AWARD OF ATTORNEY'S FEES**

9 Plaintiffs seek attorneys' fees under 28 U.S.C. § 1447(c) for bringing this Motion to Remand.  
10 28 U.S.C. § 1447(c) provides in pertinent part: "An order remanding the case may require payment  
11 of just costs and any actual expenses, including attorney fees, incurred as a result of the removal."  
12 An award of attorney's fees under § 1447(c) is within the broad discretion of the Court. Although  
13 bad faith need not be shown, the Court must undertake some review of the merits of the removal  
14 petition to assess the reasonableness of the attempted removal. Moore v. Permanente Med. Group,  
15 981 F.2d 443, 446-47 (9<sup>th</sup> Cir. 1992). As previously noted, the complaint is silent as to the amount  
16 in controversy and Defendants presented no substantial factual support of an amount in controversy  
17 in excess of \$75,000. More importantly, State Farm was put on notice that Plaintiffs were joining  
18 the necessary party, the non-diverse defendant and it appears State Farm made a race to the  
19 courthouse to file the notice of removal before Plaintiffs filed their amended complaint. State Farm  
20 was necessarily aware that its own policy language required Plaintiffs to name the non-diverse  
21 uninsured motorist as an additional defendant in order to maintain this lawsuit and that this would  
22 divest this Court of jurisdiction. With this knowledge, State Farm even declined the invitation from  
23 Plaintiffs to join in a stipulated order of remand. Under these circumstances, the Court finds State  
24 Farm's removal unreasonable.

25 The Court finds that an award of attorney fees would be appropriate in this instance. The

1 award is necessary to further the goal of deterring improper removal. Defendants' removal appears  
2 to have been taken in bad faith, or for the purpose of harassing Plaintiffs and delaying the progress of  
3 the lawsuit.

4 **CONCLUSION**


5 For the reasons set forth above, this Court lacks jurisdiction over this action. The Plaintiffs'  
6 motion for remand shall be granted. The request for an award of attorney's fees is granted.

7 **ACCORDINGLY;**

8 **IT IS ORDERED:**

- 9 (1) Plaintiffs' Motion to Remand [Dkt. #8] is **GRANTED**  
10 (2) Defendant shall pay the Plaintiffs \$800.00 on or before May 11, 2007 as payment of  
11 just costs and attorney fees incurred as a result of the removal.

12  
13 DATED this 30<sup>th</sup> day of April, 2007.

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17 FRANKLIN D. BURGESS  
18 UNITED STATES DISTRICT JUDGE  
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